

FILED-USBC, FLS-MIA
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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No. 23-20131-CLC

Judge: Corali Lopez-Castro

In re:

MARIO MIRABAL, Debtor.

ADVERSARY PROCEEDING COMPLAINT

Plaintiff: Mario Mirabal

v.

Defendant: Deutsche Bank National Trust Company

Introduction:

This is an adversary proceeding under 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 7001, seeking a determination regarding the validity and enforceability of the mortgage lien held

by Deutsche Bank National Trust Company due to alleged fraudulent assignment and violations of Pooling and Servicing Agreement (PSA) terms.

Jurisdiction and Venue:

2. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334.

3. Venue is proper in this district under 28 U.S.C. § 1409.

Background:

4. Plaintiff, Mario Mirabal, is the debtor in the above-captioned bankruptcy case.

5. Defendant, Deutsche Bank National Trust Company, claims a mortgage lien on the debtor's property.

6. The assignment of the mortgage note in this case was executed by the Law Offices of David J. Stern, P.A., after the closing date specified in the PSA, raising serious questions about the validity of the assignment and the Defendant's standing.

Facts Relevant to the Complaint:

7. David J. Stern's law firm, responsible for the assignment of the mortgage note, has a history of fraudulent practices, as highlighted in cases such as:

Office of Attorney General, State of Florida v. Law Offices of David

J. Stern, P.A., where Stern's firm faced allegations of widespread fraudulent document practices in foreclosure cases.

In Re David J. Stern (Florida Bar Case No. 2011-50,870(17C)) where David J. Stern was disbarred for misconduct involving the falsification of foreclosure documents.

Pino v. Bank of New York, 121 So. 3d 23 (Fla. 2013), wherein the Florida Supreme Court noted concerns regarding Stern's practices affecting numerous foreclosure cases.

8. The assignment of the mortgage in question was executed after the PSA's closing date. This violates the requirements set forth in the PSA, which specified that all assignments must be completed before the closing date.

Relevant Case: U.S. Bank National Association v. Ibanez, 458 Mass. 637 (2011), where the Massachusetts Supreme Judicial Court ruled that failure to follow PSA requirements invalidated the bank's right to foreclose.

Relevant Case: Glaski v. Bank of America, 218 Cal.App.4th 1079 (2013), where the California Court of Appeal allowed a borrower to challenge the validity of an assignment made after the PSA closing date.

9. The validity of the assignment in this case directly impacts Deutsche Bank's standing to enforce the mortgage and assert a claim against the debtor's property in this proceeding.

Allegations:

Count I: Violation of PSA Terms

10. The assignment (exhibit 1) kept from this court was executed after the closing date set by the PSA, the transfer on that instrument was conducted 1189 days after the closing date, rendering it void under the terms of the securitization trust agreement. The PSA is very clear (exhibit 2) " If a substitution or purchase of a Mortgage Loan pursuant to this provision is required because of a delay in delivery of any documents by the appropriate recording office, or there is a dispute between either the Servicer or the Seller and the Trustee over the location or status of the recorded document, then the substitution or purchase shall occur within 720 days from the Closing Date. In no other case may a substitution or purchase occur more than 540 days from the Closing Date. (page 53)"

b. The assignment was signed by known robo signer Ericaka A. Johnson seck, who has acknowledged in depositions she improperly signed 1000's mortgage documents on a weekly basis without carefully reviewing them:

**INDYMAC FEDERAL BANK FSB, vs. ISRAEL A. MACHADO; NEENA
CASE NO.50 2008 CA 037322XXXX MB**

Ms. Johnson-Seck has been the subject of several uncomplimentary judicial opinions. In the case of *In re Kang Jin Hwang*, 396 B.R. 757 (Bankr. C.D. Cal. 2008), the Court expressed disbelief regarding her testimony that IndyMac was the duly authorized servicing agent for the note owner.

In *Deutsche Bank National Trust Company v. Maraj*, 18 Misc 3d 1123 (A) (Sup Ct, Kings County 2008), Judge Schack was concerned that Ms. Johnson-Seck “assigned the mortgage to plaintiff, DEUTSCHE BANK, and then subsequently executed the affidavit of facts ... as an officer of DEUTSCHE BANK.”

Did Ms. Johnson-Seck change employers from July 3, 2007 to July 31, 2007, or does she engage in self dealing by wearing two corporate hats? The Court is concerned that there may be fraud on the part of plaintiff DEUTSCHE BANK, or at least malfeasance. The Court requires an affidavit. The court openly wondered if Ms. Johnson-Seck was committing fraud on the court: from Ms. Johnson-Seck, describing her employment history for the past three years.

Ms. Johnson-Seck never provided the ordered affidavit.

The *Maraj* case is identical to the instant case insofar as Ms. Johnson-Seck signed the Assignment of Mortgage as the officer of MERS and also the Affidavit of Amounts Due and Owing as an officer of Plaintiff. Similarly, in *Indymac Bank, FSB v. Bethley*, 2009 NY Slip Op. 50186 (N.Y. Sup. Ct. 2/6/09), Judge Schack ordered Plaintiff to provide affidavit of Ms. Johnson-Seck explaining how she could act as Vice President of INDYMAC BANK, FSB, MERS, and Deutsche Bank without a conflict. As with the *Maraj* case, Ms. Johnson-Seck never provided the ordered affidavit.

Defendants in this case deposed Johnson-Seck on July 9, 2009, the transcript of which has been filed with the Court. At that time, she revealed that Plaintiff and Plaintiff’s counsel have actively and repeatedly misled the Court in this case, transgressions that merit

even the severest of sanctions – outright dismissal of this case. Specifically:

Each of these offenses, taken by itself, sullies the integrity of the judicial system and richly deserves the rebuke of the Court. Together, they demonstrate a pattern of misconduct that evinces the unmistakable portrait of a litigant that is contemptuous of the truth and, in the pursuit of expediency, quite willing to make a mockery of the Court's discovery procedures.

c. Exhibit A of The proof of claim filed by Deutsche Bank to this Court is an invalid assignment also executed after the closing date set by the PSA (exhibit 3), also included in this exhibit is the MERS status for this instrument (inactive)

11. The untimely assignment s and the involvement of Ms. Johnson-Seck prevents Deutsche Bank from having standing as a valid party in interest.

Count II: Questionable Credibility of the Assignment

12. The assignment was conducted by David J. Stern's firm, known for engaging in fraudulent practices, casting doubt on the legitimacy of the assignment presented to this Court. (exhibit 4)

"The Supreme Court of Florida disbarred Stern for engaging in a pattern of misconduct, improper staff training, missed hearings and abandonment of case files while serving as head of the Law Offices of David J. Stern, P.A. The Court Referee noted that Stern's misconduct reflected a "low level of competence and ethics" and

involved (among other things) “false notarizations, witnessing, and backdating” and “fraudulent attorneys’ fees affidavits.”

Report of Referee, *The Florida Bar v. David James Stern*, Case No. SC13-643 (S.Ct.Fla. Oct. 28, 2013) at pp. 19, 31"

13. The timing and manner of the assignment raise questions of its authenticity and compliance with legal standards.

Count III: Impact on Creditor's Standing

14. Because the assignment was not validly executed, Deutsche Bank lacks the legal standing to pursue foreclosure or other claims against the property.

15. The case *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998), emphasizes the requirement of clean hands and honest practices by parties bringing claims in court. This principle further supports the challenge to Deutsche Bank's standing based on the questionable assignment.

Count IV: Potential Collusion and Ethical Violations

16. During the deposition of Carlos Perez, it was revealed that his counsel had communications with Deutsche Bank prior to filing the specific performance suit against the debtor.

17. These communications suggest potential collusion aimed at undermining the debtor's ability to resolve matters with Deutsche Bank, thus impacting the integrity of the proceedings.

18. ORDER OF DISMISSAL WITH PREJUDICE BASED ON
SETTLEMENT dated March 5, 2020 02:38:13 PM (Exhibit 5)

19. JOINT MOTION TO REMOVE FROM TRIAL DOCKET DUE TO
PENDING SETTLEMENT dated March 5, 2020 01:07:12 PM /
Executed with out the defendants consent by defendants counsel
(exhibit 6)

20. AGREED ORDER VACATING ORDER OF DISMISSAL BASED ON
SETTLEMENT dated March 6, 2020 (exhibit 7)

21. AGREED ORDER ON JOINT MOTION TO REMOVE FROM TRIAL
DOCKET DUE TO PENDING SETTLEMENT dated March 6, 2020
(exhibit 8)

These exhibits demonstrate the vacating of a prior order of dismissal that was initially based on a settlement agreement. The original dismissal was intended to resolve claims based on a settlement amount, and the subsequent reversal suggests potential improper actions and a shift from the original terms agreed upon. This history directly impacts the claim's validity and underscores the issues of misrepresentation and potential misconduct that form the basis of this adversary proceeding.

22. APPROVAL OF DISCOUNTED PAYOFF SETTLEMENT 03/12/2021
(exhibit 9)

Relief Requested:

WHEREFORE, Plaintiff respectfully requests that this Honorable

Court:

Declare that the assignment of the mortgage note to Deutsche Bank is void and unenforceable.

Determine that Deutsche Bank lacks standing to enforce the mortgage against the debtor's property.

Award any other relief that the Court deems just and proper.

Respectfully submitted,


Mario Mirabal

563 w 49 st

Miami Beach , FL 33140

solphax@gmail.com

Exhibit 1

CFN 2010R0438138
 OR Bk 27336 Ps 33721 (189)
 RECORDED 06/30/2010 09:08:05
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA
 LAST PAGE

Prepared by: DAVID J. STERN, ESQ
 Record & Return to: 900 South Pine Island Road #400
 Plantation, FL 33324-3920
 08-56391 (INDNW)

This space is for recording purposes only

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

THAT INDYMAC BANK, F.S.B.

Residing or located at c/o OneWest Bank, FSB, 888 East Walnut Street, Pasadena, California 91101, herein designated as the assignor, for and in consideration of the sum of \$1.00 Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Trust 2007-ARS, Mortgage Pass-Through Certificates, Series 2007-ARS under the Pooling and Servicing Agreement dated March 1, 2007 residing or located at: c/o OneWest Bank, FSB, 888 East Walnut Street, Pasadena, California 91101 herein designated as the assignee, the mortgage executed by ARIANA BIRENCWAJG, A SINGLE WOMAN recorded in MIAMI-DADE County, Florida at book 25351 and page 3917 encumbering the property more particularly described as follows:

LOT 21, BLOCK 27, LAKE VIEW SUBDIVISION, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 14, PAGE 42 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

together with the note and each and every other obligation described in said mortgage and the money due and to become due thereon

TO HAVE AND TO HOLD the same unto the said assignee, its successors and assigns forever, but without recourse on the undersigned.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, as of the 18 day of June, 2010.

Signed in the presence of:

INDYMAC BANK, F.S.B.
 (CORPORATE SEAL)

ATTEST:

BY: [Signature]
 PRINT NAME: Erica A. Johnson-Seck
 TITLE: Attorney in Fact

WITNESS: [Signature]
 Print Name: Daniel Garcia

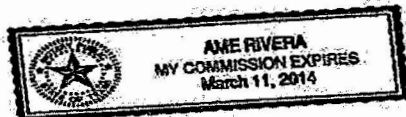
WITNESS: [Signature]
 Print Name: Concepcion

STATE OF Texas
 COUNTY OF Travis

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 18 day of June, 2010, within my jurisdiction, the within named Erica A. Johnson-Seck who is personally known to me or who produced [Signature] as identification and who acknowledged to me that (s)he is ATTORNEY IN FACT and that for and on behalf of INDYMAC BANK, F.S.B. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by INDYMAC BANK, F.S.B. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 18 day of June, 2010.

one west asg



[Signature]
 NOTARY PUBLIC



Exhibit 2

Closing Date: March 29, 2007. (page 12)

Delay Delivery Mortgage Loans: The Mortgage Loans identified on the Mortgage Loan Schedule for which all or a portion of a related Mortgage File is not delivered to the Trustee by the Closing Date. The Depositor shall deliver the Mortgage Files to the Trustee:

(A) for at least 70% of the Mortgage Loans in each Loan Group, not later than the Closing Date and

(B) for the remaining 30% of the Mortgage Loans in each Loan Group, not later than five Business Days following the Closing Date.

To the extent that the Seller is in possession of any Mortgage File for any Delay Delivery Mortgage Loan, until delivery of the Mortgage File to the Trustee as provided in Section 2.01, the Seller shall hold the files as Servicer, as agent and in trust for the Trustee. (Page 16)

In the event that in connection with any Mortgage Loan that is not a MERS Mortgage Loan the Depositor cannot deliver (a) the original recorded Mortgage, (b) all interim recorded assignments or (c) the lender's title policy (together with all riders thereto) satisfying the requirements of clause (ii), (iii) or (v) above, respectively, concurrently with the execution and delivery of this Agreement because such document or documents have not been returned from the applicable public recording office in the case of clause (ii) or (iii) above, or because the title policy has not been delivered to either the Servicer or the Depositor by the applicable title insurer in the case of clause (v) above, then the Depositor shall promptly deliver to the Trustee, in the case of clause (ii) or (iii) above, the original Mortgage or the interim assignment, as the case may be, with evidence of recording indicated on when it is received from the public recording office, or a copy of it, certified, if appropriate, by the relevant recording office and in the case of clause (v) above, the original or a copy of a written commitment or interim binder or preliminary report of title issued by the title insurance or escrow company, with the original or duplicate copy thereof to be delivered to the Trustee upon receipt thereof. The delivery of the original Mortgage Loan and each interim assignment or a copy of them, certified, if appropriate, by the relevant recording office, shall not be made later than one year following the Closing Date, or, in the case of clause (v) above, later than 120 days following the Closing Date. If the Depositor is unable to deliver each Mortgage by that date and each interim assignment because any documents have not been returned by the appropriate recording office, or, in the case of each interim assignment, because the related Mortgage has not been returned by the appropriate recording office, the Depositor shall deliver the documents to the Trustee as promptly as possible upon their receipt and, in any event, within 720 days following the Closing Date. (Page 51)

The Trustee acknowledges that it will maintain possession of the related Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies. The Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Servicer and the Seller an Initial Certification in the form of Exhibit G-1. Based on its review and examination, and only as to the documents identified in such Initial Certification, the Trustee acknowledges that such documents appear regular on their face and relate to such Mortgage Loans. The Trustee shall be under no duty or obligation to inspect, review or examine said documents, instruments, certificates or other papers to determine that the same are genuine, (page 51)

If, in the course of its review, the Trustee finds any document constituting a part of a Mortgage File that does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification. The Trustee shall not make any determination as to whether (i) any endorsement is sufficient to transfer all interest of the party so endorsing, as noteholder or assignee thereof, in that Mortgage Note or (ii) any assignment is in recordable form or is sufficient to effect the assignment of and transfer to the assignee thereof under the mortgage to which the assignment relates. The Seller shall promptly correct any defect that materially and adversely affects the interests of the Certificateholders within 90 days from the date it was so notified of the defect and, if the Seller does not correct the defect within that period, the Seller shall either (a) substitute for the related Mortgage Loan a Substitute Mortgage Loan, which substitution shall be accomplished in the pursuant Section 2.03, or (b) purchase the Mortgage Loan at its Purchase Price from the Trustee within 90 days from the date the Seller was notified of the defect in writing.

If a substitution or purchase of a Mortgage Loan pursuant to this provision is required because of a delay in delivery of any documents by the appropriate recording office, or there is a dispute between either the Servicer or the Seller and the Trustee over the location or status of the recorded document, then the substitution or purchase shall occur within 720 days from the Closing Date. In no other case may a substitution or purchase occur more than 540 days from the Closing Date. (page 53)

Exhibit 3

CFN 2009R0280916
 OR BK 26832 Pg 26791 (1pg)
 RECORDED 04/17/2009 11:36:45
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA
 LAST PAGE

Prepared by: DAVID J. STERN, ESQ
 Record & Return to: 900 South Pine Island
 Road #400
 Plantation, FL 33324-3920
 08-56391 (INDNW)

MERS MIN: 100014700970042005
 MERS PHONE NUMBER: 1-888-679-6377

This space is for recording purposes only

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS

THAT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Residing or located at 7700 W. PARMER, BLDG. D., AUSTIN, TX 78729 herein designated as the assignor, for and in consideration of the sum of \$1.00 Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer and set over unto INDYMAC BANK, F.S.B. residing or located at: C/O 7700 W. PARMER, BLDG.D., AUSTIN, TX 78729 herein designated as the assignee, the mortgage executed by ARIANA BIRENCWAJG, A SINGLE WOMAN recorded in MIAMI-DADE County, Florida at book 25351 and page 3917 encumbering the property more particularly described as follows:

LOT 21, BLOCK 27, LAKE VIEW SUBDIVISION, ACCORDING TO MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 14, PAGE 42 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

together with the note and each and every other obligation described in said mortgage and the money due and to become due thereon

TO HAVE AND TO HOLD the same unto the said assignee, its successors, and assigns forever, as of the 16TH day of April, 2008, but without recourse on the undersigned.

In Witness Whereof, the said Assignor has hereunto set his hand and seal or caused these presents to be signed by its proper corporate officers and its corporate seal to be hereto affixed, as of the 31 day of Mar., 2009.

Signed in the presence of:

MORTGAGE ELECTRONIC
 REGISTRATION SYSTEMS, INC.

ATTEST:

BY:

PRINT NAME: Roger Stotts

TITLE: VICE PRESIDENT

WITNESS:

Print Name: Gail W. [Signature]

WITNESS:

Print Name: Jonathan Gault

STATE OF Texas
 COUNTY OF Williamson

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid county and state, on this the 31 day of Mar., 2009, within my jurisdiction, the within named Roger Stotts who is personally known to me or who produced _____ as identification and who acknowledged to me that (s)he is VICE PRESIDENT and that for and on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and as its act and deed (s)he executed the above and foregoing instrument, after first having been duly authorized by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. to do so.

WITNESS my hand and official seal in the County and State last aforesaid this 31 day of Mar., 2009.



PBM *F08-56391* *DII04*



MERS[®]
ServicerID

1 Record Matched Your Search

MIN: 1000147-0097004200-5 Note Date: 05/24/2007

MIN Status: Inactive

Servicer: CitiMortgage, Inc.

Phone: (800) 283-7918

O'Fallon, MO

If you are a borrower on this loan, you can [click here](#) to enter additional information and display the Investor name.

[Return to Search](#)

For more information about Mortgage Electronic Registration Systems, Inc. (MERS) please go to www.mersinc.org

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Exhibit 4

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75673 / August 12, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16743

In the Matter of

DAVID J. STERN,

Respondent.

**ORDER OF SUSPENSION PURSUANT
TO RULE 102(e)(2) OF THE
COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of David J. Stern pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.102(e)(2)].¹

II.

The Commission finds that:

1. Stern was admitted to practice law in the state of Florida in 1991.
2. On January 7, 2014, the Supreme Court of Florida disbarred Stern for engaging in a pattern of misconduct, improper staff training, missed hearings and abandonment of case files while serving as head of the Law Offices of David J. Stern, P.A. The Court Referee noted that Stern's misconduct reflected a "low level of competence and ethics" and involved (among other things) "false notarizations, witnessing, and backdating" and "fraudulent attorneys' fees affidavits." Report of Referee, *The Florida Bar v. David James Stern*, Case No. SC13-643 (S.Ct.Fla. Oct. 28, 2013) at pp. 19, 31.

¹ Rule 102(e)(2) provides in pertinent part: Any attorney who has been suspended or disbarred by a court of the United States or of any State; . . . or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission." See 17 C.F.R. 201.102(e)(2).

3. During the time of the misconduct for which Stern was disbarred, he was the CEO of a public company and made filings with the Commission in that capacity.

III.

In view of the foregoing, the Commission finds that Stern is an attorney who has been disbarred by a State court within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that David J. Stern is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Brent J. Fields
Secretary

Exhibit 5

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-018704-CA-01

SECTION: CA13

JUDGE: Alexander Bokor

Deutsche Bank National Trust Company

Plaintiff(s)

vs.

Ariana Birencwajg et al

Defendant(s)

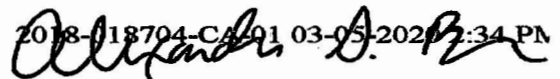
_____ /

ORDER OF DISMISSAL BASED ON SETTLEMENT

THIS COURT has been advised that the matter has been settled as to all parties and therefore, it is hereby:

ORDERED AND ADJUDGED that this case is dismissed with prejudice. The Court reserves jurisdiction to enforce the settlement and to enter orders necessary to this enforcement, or to set aside this Order of Dismissal if the matter has not been resolved. The Court also reserves jurisdiction to assess attorney's fees and costs, if applicable, upon proper motion and hearing.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 5th day of March, 2020.


2018-018704-CA-01 03-05-2020 2:34 PM

2018-018704-CA-01 03-05-2020 2:34 PM

Hon. Alexander Bokor

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

Jarret Ian Berfond, FLeFileTeam@brockandscott.com

Jarret Ian Berfond, FLCourtDocs@brockandscott.com

Jarret Ian Berfond, CourtXpress@firmsolutions.us

Jason J Ricardo, service@ricardolaw.com

Jason J Ricardo, kim@ricardolaw.com

Jessica J Fagen, FLeFileTeam@brockandscott.com

Jessica J Fagen, FLCourtDocs@brockandscott.com

Jessica J Fagen, CourtXpress@firmsolutions.us

Physically Served:

Exhibit 6

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

Case No.: 2018-CA-18704

DEUTSCHE BANK NATIONAL TRUST COMPANY AS
TRUSTEE FOR INDYMAC INDX MORTGAGE LOAN
TRUST 2007-AR5, MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2007-AR5,
Plaintiff,

v.

ARIANA BIRENCWAJG,
et al.,
Defendant(s).

**JOINT MOTION TO REMOVE FROM TRIAL DOCKET
DUE TO PENDING SETTLEMENT**

COMES NOW, Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY AS
TRUSTEE FOR INDYMAC INDX MORTGAGE LOAN TRUST 2007-AR5, MORTGAGE
PASS-THROUGH CERTIFICATES SERIES 2007-AR5 and Defendant, MARIO MIRABAL, by
and through undersigned counsel, moves to remove the case from the trial docket set for March
9, 2020 and further states:

1. This matter is current scheduled for trial before this honorable court on Monday, March 9, 2020 at 11:00am.
2. The Parties have reached an amicable resolution in this matter, which will ultimately result in a dismissal of this case with prejudice.
3. While the terms of the settlement have been agreed upon, full compliance with the terms of the agreement are not set to be concluded until April 6, 2020.
4. The parties anticipate the filing of the dismissal with prejudice on or about April 7, 2020.
5. No party will suffer undue prejudice if this matter is removed from the trial docket.
6. The Parties seek removal of this matter from the trial docket in good faith and judicial economy, and request the Court continue this matter for an additional 60 days.

WHEREFORE, the Parties respectfully pray that this honorable Court grant this Joint Motion to Remove from the Trial Docket and reset this matter for a future date to allow settlement terms to be completed and dismissal to be filed.

We hereby affirm that the above is true and correct:

/s/Jarret Berfond
Jarret Berfond, Esq.
Counsel for Plaintiff

03/05/20
Date

/s/ Jason J. Ricardo
Jason J. Ricardo, Esq.
Counsel for Defendant

03/05/20
Date

CERTIFICATE OF SERVICE

I hereby certify that the above Motion was served upon counsel for Plaintiff, Brock & Scott, PLLC at flcourtdocs@brockandscott.com; Mortgage Electronic Registration Systems, Inc. c/o CT Corporation System, RA by US mail at 1200 South Pine Island Rd, Plantation, FL 33324; Citibank NA by US mail at 701 E 60th St. N, Sioux Falls, SD 57104; State of Florida Department of Revenue by US mail at 2450 Shumard Oak Blvd, Tallahassee, FL 32399 and to Ariana Birencwajg by US mail at 300 71st St. Ste 405, Miami Beach, FL 33141 this 5th day of March, 2020.

/s/ Jason J. Ricardo
Jason J. Ricardo, Esq. (FBN 049123)
Ricardo & Wasylik, PL
P.O. Box 2245
Dade City, Florida 33526
Tel. 352-567-3173
Fax 352-567-3193
service@ricardolaw.com
Counsel for Defendant

Exhibit 7

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-018704-CA-01

SECTION: CA13

JUDGE: Alexander Bokor

Deutsche Bank National Trust Company

Plaintiff(s)

vs.

Ariana Birencwajg et al

Defendant(s)

_____ /

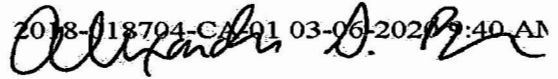
AGREED ORDER VACATING ORDER OF DISMISSAL BASED ON SETTLEMENT

THIS CAUSE having come before the Court on the Agreed Order Vacating Court's Order of Dismissal Based on Settlement, and the Court having heard the agreement of parties, having reviewed the file and the Court being otherwise duly advised, it is thereupon,

ORDERED AND ADJUDGED:

The Order of Dismissal based on Settlement entered March 5, 2020 is hereby VACATED. The case shall remain open and the Trial set on March 9, 2020 at 11:00 AM shall proceed accordingly.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 6th day of March, 2020.

2018-018704-CA-01 03-06-2020 9:40 AM


2018-018704-CA-01 03-06-2020 9:40 AM

Hon. Alexander Bokor

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Ayleen Sanchez, Ayleen.Sanchez@brockandscott.com

Jarret Ian Berfond, FLeFileTeam@brockandscott.com

Jarret Ian Berfond, FLCourtDocs@brockandscott.com

Jarret Ian Berfond, CourtXpress@firmsolutions.us

Jason J Ricardo, service@ricardolaw.com

Jason J Ricardo, kim@ricardolaw.com

Jessica J Fagen, FLeFileTeam@brockandscott.com

Jessica J Fagen, FLCourtDocs@brockandscott.com

Jessica J Fagen, CourtXpress@firmsolutions.us

Physically Served:

Exhibit 8

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2018-018704-CA-01

SECTION: CA13

JUDGE: Alexander Bokor

Deutsche Bank National Trust Company

Plaintiff(s)

vs.

Ariana Birencwajg et al

Defendant(s)

**AGREED ORDER ON JOINT MOTION TO REMOVE FROM TRIAL DOCKET DUE
TO PENDING SETTLEMENT**

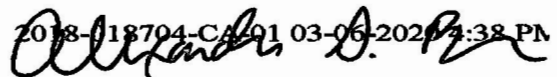
THIS CAUSE came before the Court on the Joint Motion to Remove from Trial Docket Due to Pending Settlement and the Court having considered the motion, and being otherwise fully advised in the premises, it is:

ORDERED and ADJUDGED as follows:

1. The Joint Motion to Remove from Trial Docket Due to Pending Settlement is hereby GRANTED.

2. The matter is continued to allow parties time to effectuate settlement.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 6th day of March, 2020.


2018-018704-CA-01 03-06-2020 4:38 PM

2018-018704-CA-01 03-06-2020 4:38 PM

Hon. Alexander Bokor

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Jarret Ian Berfond, FLeFileTeam@brockandscott.com

Jarret Ian Berfond, FLCourtDocs@brockandscott.com

Jarret Ian Berfond, CourtXpress@firmsolutions.us

Jason J Ricardo, service@ricardolaw.com

Jason J Ricardo, kim@ricardolaw.com

Jessica J Fagen, FLeFileTeam@brockandscott.com

Jessica J Fagen, FLCourtDocs@brockandscott.com

Jessica J Fagen, CourtXpress@firmsolutions.us

Physically Served:

Exhibit 9



MORTGAGE

PHH Mortgage Services | 1 Mortgage Way | Mt Laurel NJ 08054 | Tel: 1-877-744-2506 | Fax: 1-856-917-8300

February 1, 2021

Account Number: 7190048947

0-814-BKW82-0000001-001-01-000-000-000-LM085



ARIANA BIRENCWAJG
3
839 W 40TH ST
MIAMI FL 33140-3819

Property Address:
563 W 49TH ST
MIAMI BEACH FL 33140-2601

This offer expires on:

03/12/2021

APPROVAL OF DISCOUNTED PAYOFF SETTLEMENT PLEASE READ CAREFULLY

We are here to help!
Account Relationship Manager:
RITESH R GUPTA
RMA@mortgagefamily.com
Online:
www.MortgageQuestions.com

Dear ARIANA BIRENCWAJG,

Congratulations! PHH Mortgage Services ("Company"), acting on behalf of OCWEN MASTER SERVICING ("Investor"), has approved a discounted payoff settlement on the above-referenced account in the amount of \$590000 ("Payoff Amount"). Please read this letter so the next steps that are necessary to accept this offer are understood.

Below is important information about our decision regarding mortgage assistance with additional details on the following pages. However, **time is of the essence**, as this offer will expire on 03/12/2021 (the "Expiration Date"), so please make sure a response is sent to us by the date listed on this letter.

What needs to be done:

To accept the approved offer:

1. The Discounted Payoff Settlement Agreement must be signed and returned to us by email or fax for faster processing or mail in the enclosed, prepaid envelope by 03/12/2021.
2. The payoff amount of \$590000 (Payoff Amount) must be wire transferred if the offer is accepted.

What needs to be understood:

1. The account is approved for a Discounted Payoff Settlement in the amount of \$590000. **This discounted payoff expires on 03/12/2021** (the "Expiration Date"). The terms of this payoff option must be complied with on or before the Expiration Date. Otherwise, this payoff option offer will no longer be available.
2. The offer details are enclosed. **Please read all materials carefully.**

www.MortgageQuestions.com

LM085

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is provided purely for informational purposes only with regard to our secured lien on the above referenced property. It is not intended as an attempt to collect a debt from you personally. As may be required by state law, you are hereby notified that a negative credit report reflecting on an accountholder's credit record may be submitted to a credit reporting agency if credit obligation terms are not fulfilled.

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Mario Mirabal	DEFENDANTS Deutsche Bank National Trust Company			
ATTORNEYS (Firm Name, Address, and Telephone No.) PRO SE	ATTORNEYS (If Known) FILED-USBC, FLS-MIA 24 OCT 24 PM 2:30			
PARTY (Check One Box Only) ☒ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☒ Creditor ☐ Other ☐ Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) ADVERSARY PROCEEDING COMPLAINT / UNDER 11 U.S.C. SS 105 FEDERAL RULE 7001 / COURT JURISDICTION UNDER 28 U.S.C. SS 157 AND 1334 / VENUE UNDER 28 U.S.C. SS 1409				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property ☐ 11-Recovery of money/property - §542 turnover of property ☐ 12-Recovery of money/property - §547 preference ☒ 13-Recovery of money/property - §548 fraudulent transfer ☐ 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien ☒ 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge ☐ 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation ☐ 51-Revocation of confirmation FRBP 7001(6) – Dischargeability ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column) </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) ☐ 61-Dischargeability - §523(a)(5), domestic support ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury ☐ 63-Dischargeability - §523(a)(8), student loan ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) ☐ 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief ☒ 71-Injunctive relief – imposition of stay ☐ 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest ☐ 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment ☒ 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action ☐ 01-Determination of removed claim or cause Other ☐ SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property ☐ 11-Recovery of money/property - §542 turnover of property ☐ 12-Recovery of money/property - §547 preference ☒ 13-Recovery of money/property - §548 fraudulent transfer ☐ 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien ☒ 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge ☐ 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation ☐ 51-Revocation of confirmation FRBP 7001(6) – Dischargeability ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	FRBP 7001(6) – Dischargeability (continued) ☐ 61-Dischargeability - §523(a)(5), domestic support ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury ☐ 63-Dischargeability - §523(a)(8), student loan ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) ☐ 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief ☒ 71-Injunctive relief – imposition of stay ☐ 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest ☐ 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment ☒ 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action ☐ 01-Determination of removed claim or cause Other ☐ SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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☒ Check if this case involves a substantive issue of state law		☐ Check if this is asserted to be a class action under FRCP 23		
☐ Check if a jury trial is demanded in complaint		Demand \$		
Other Relief Sought Declare that the assignment of the mortgage note to Deutsche Bank is void and unenforceable. Determine that Deutsche Bank lacks standing to enforce the mortgage against the debtor's property				

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Mario Mirabal		BANKRUPTCY CASE NO. 23-20131-clc
DISTRICT IN WHICH CASE IS PENDING Southern District of Florida	DIVISION OFFICE Miami Division	NAME OF JUDGE Coral Lopez-Castro
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE <i>October 23, 2024</i>		PRINT NAME OF ATTORNEY (OR PLAINTIFF) <i>Mario Mirabal</i>

B1040 (FORM 1040) (12/15)

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